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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

LA ALLIANCE FOR HUMAN
RIGHTS, et al.,

Plaintiffs,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

CASE NO. 2:20-cv-02291 DOC-KES

**COUNTY OF LOS ANGELES'
STATUS CONFERENCE
STATEMENT**

Date: April 23, 2020
Time: 10:00 a.m.
Crtrm.: 501 S. Spring St,
Los Angeles, CA 90013

Assigned to the Hon. David O. Carter
and Magistrate Judge Karen E. Scott

1 [Continued from previous page]

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1 **I. INTRODUCTION**

2 The County of Los Angeles (“County”) is facing an unprecedented public health
3 crisis. There are now over 13,000 known cases of COVID-19, and over 600 deaths, in
4 the County. Public health experts project that immediate safety measures will be
5 critical to curbing the spread of COVID-19.

6 The County faces a particularly daunting challenge during this pandemic:
7 housing the significant number of County residents who are experiencing
8 homelessness. Individuals experiencing homelessness are at particular risk of being
9 exposed to, and contracting, COVID-19. They are also less likely to have access to the
10 basic hygiene facilities, healthcare services, and medical resources that could save their
11 lives.

12 Governor Gavin Newsom recognized the need to find a way to protect the tens of
13 thousands of people experiencing homelessness in California, and created a novel
14 initiative called “Project Roomkey.” Project Roomkey, the first program of its kind in
15 the nation, marshals support from the hard-hit hospitality sector by identifying hotel
16 and motel rooms that can be used as temporary housing for individuals experiencing
17 homelessness most susceptible to the risk of contracting and spreading COVID-19.
18 Project Roomkey has been praised by the National Alliance to End Homelessness. The
19 Federal Emergency Management Agency (“FEMA”) also signed on, agreeing to fund a
20 75 percent cost-share reimbursement for state and local governments.

21 In partnerships with the State, the City of Los Angeles (“City”) and the Los
22 Angeles Homeless Services Authority (“LAHSA”), the County has been at the
23 forefront of Project Roomkey, as well as efforts to establish isolation and quarantine
24 facilities, procuring and securing more than 2,500 hotel and motel rooms at over 250
25 hotels across the region.

26 Meanwhile, the County has also been working to establish hotel and motel
27 facilities for the purposes of isolating and quarantining persons with, or exhibiting
28 symptoms of, COVID-19. While these facilities are available to any persons in need of

1 isolation or quarantine, they have been predominately used by, and made available to,
 2 persons experiencing homelessness, providing an additional housing option and
 3 alternative to hospitalization or Project Roomkey. The State and FEMA have also
 4 authorized these efforts in response to the declared emergency.

5 Between these two programs, the County is working to provide safe isolation and
 6 quarantine capacity, as well as prevent the spread of COVID-19 and flatten the curve
 7 by protecting our most vulnerable citizens.

8 Many cities have embraced Project Roomkey and the establishment of isolation
 9 and quarantine facilities. The County's efforts have met resistance from several cities,
 10 however, necessitating this status conference. While cities are questioning this critical
 11 public health initiative by relying on zoning laws, use permits, and contractual
 12 provisions, they ignore the fact that both of these programs are temporary, emergency
 13 initiatives that are critical to protecting the health of the greater community. These
 14 cities also ignore that the County-administered programs are expressly permitted under
 15 the California Emergency Services Act and Governor Gavin Newsom's Executive
 16 Orders. This is a matter of statewide concern that the cities cannot override, whether by
 17 way of letter, ordinance, or lawsuit.

18 **I. THE COUNTY'S EMERGENCY HOUSING PROGRAMS**

19 On March 4, 2020, the Governor of the State of California proclaimed a State of
 20 Emergency to exist in California as a result of COVID-19. That same day, the Los
 21 Angeles County Board of Supervisors proclaimed a local emergency, and the Los
 22 Angeles County Health Officer declared a local health emergency.

23 On March 12, 2020, the Governor issued an Executive Order (N-25-20) that,
 24 among other things, included the following directive:

25 The California Health and Human Services Agency and the Office of
 26 Emergency Services shall identify, and shall otherwise be prepared to
 27 make available—including through the execution of any necessary
 28 contracts or other agreements and, if necessary, through the exercise of the
 State's power to commandeer property—hotels and other places of

1 temporary residence[.]

2 On March 13, 2020, the President of the United States issued a nationwide
3 Emergency Declaration.

4 On March 18, 2020, the Governor announced \$150 million in emergency funding
5 to find a way to move individuals experiencing homelessness indoors. Of the \$150
6 million, \$50 million was to be used for buying travel trailers and leasing hotels, motels,
7 and other temporary housing facilities. The County immediately began negotiating
8 with hotel and motel owners to provide beds for persons diagnosed or exhibiting
9 symptoms of COVID-19, as well as persons experiencing homelessness most at risk of
10 contracting COVID-19. The County entered into its first contract for an isolation and
11 quarantine facility in mid-March 2020, followed by its first contracts for hotel and
12 motel beds for persons at risk for COVID-19 on March 31, 2020.

13 On April 3, 2020, the Governor announced Project Roomkey. Project Roomkey
14 is intended to protect “high risk” individuals, which FEMA defines as persons
15 experiencing homelessness over 65 years of age or who have certain underlying health
16 conditions (respiratory, compromised immunities, chronic disease), and who require
17 emergency non-congregate shelter as a social distancing measure. According to the
18 Governor, the goal of Project Roomkey was to secure “thousands of isolation rooms in
19 hotels and motels for extremely vulnerable individuals experiencing homelessness to
20 help flatten the curve and preserve hospital capacity.” The Governor received approval
21 for a 75 percent cost-share reimbursement from FEMA, making California the first
22 state to receive FEMA’s approval for this type of project. The State identified more
23 than 950 potential lodging facilities for these individuals. The Governor then directed
24 counties to implement the program.

25 Through the isolation and quarantine and Project Roomkey programs, the County
26 endeavors to provide temporary housing, with specific emphasis on persons
27 experiencing homelessness, by providing shelter and necessary support to those
28 individuals who have no alternative isolation or quarantine housing option. These sites

1 are essential to ensuring that those who are impacted by COVID-19, but do not require
 2 hospitalization, can be cared for in a way that protects the community and does not
 3 overburden the County healthcare system.

4 **II. OBJECTIONS TO PROJECT ROOMKEY**

5 While the County is grateful for everything many city officials and private hotel
 6 owners have done to support Project Roomkey, both the County and hotels
 7 participating in the program have met some resistance. As relevant to the cities who
 8 have been asked to attend the April 23, 2020 status conference:

- 9 • On April 14, 2020, the City of Lawndale wrote to the Best Western Plus
 10 South Bay Hotel in Lawndale and expressed its belief that “irreparable
 11 harm to the Lawndale Community” would occur if the hotel moved
 12 forward with its Project Roomkey contract. The letter invoked land use
 13 approvals, zoning regulations, the California Environmental Quality Act
 14 (“CEQA”), and the hotel’s business license.
- 15 • On April 15, 2020, the City of Bell Gardens demanded that Bell Gardens
 16 Hospitality, LLC cease “intake and acceptance of new patients
 17 immediately” and arrange “to transfer existing patients to other available
 18 facilities as soon as possible.” Bell Gardens threatened that it had
 19 prepared a declaratory relief action and would be submitting an
 20 emergency *ex parte* application for a temporary restraining order and
 21 preliminary injunctive relief directing the hotel to cease accepting new
 22 patients.

23 There are other cities that have expressed resistance to Project Roomkey.

24 **III. CITY OF LAGUNA HILLS V. ELITE HOSPITALITY, LLC**

25 The County is not alone in experiencing opposition to Project Roomkey and its
 26 efforts to implement life-saving measures by providing temporary shelter and
 27 quarantining and treating high-risk individuals experiencing homelessness.
 28

1 On April 14, 2020, the City of Laguna Hills and four property owners sued the
2 Board of Supervisors of Orange County to stop the County from taking possession of
3 the Laguna Hills Inn for use in Project Roomkey (*City of Laguna Hills v. Elite*
4 *Hospitality, Inc.*, Case No. 30-2020-01139345-CU-MC-CJC (County of Orange)). The
5 hotel's owner and a nonprofit specializing in homeless outreach were also named. The
6 plaintiffs brought claims for abatement of public nuisance, breach of the Declaration of
7 Covenants, Conditions, Restrictions and Reservation of Easements ("CC&Rs") for
8 properties within Plaza Pointe, and declaratory relief.

9 On April 16, 2020, the court denied the plaintiffs' request for a temporary
10 restraining order with respect to two causes of action, i.e., abatement of public nuisance
11 and abatement of nuisance. The court then ordered the parties to provide supplemental
12 briefing on the question of whether the CC&Rs barred Orange County from using the
13 Laguna Hills Inn as a Project Roomkey site.

14 On April 20, 2020, the court (Honorable Thomas A. Delaney) issued an order
15 denying plaintiffs' request for a temporary restraining order as it related to the claim for
16 breach of the CC&Rs. The court rejected plaintiffs' argument that the contract between
17 defendant Elite Hospitality and the County to use the Laguna Hills Inn to shelter
18 homeless individuals was a change in the use of the hotel. The court held that Orange
19 County was "acting consistent with the Governor's orders in the context of this state of
20 emergency. The CC&Rs must temporarily yield to the government's limited use of its
21 police powers during this state of emergency." The court's April 20, 2020 ruling is
22 attached as **Exhibit A**.

23 Governor Gavin Newsom filed a brief describing the critical mission of
24 Project Roomkey and explaining that local resistance threatens to undermine the
25 State's ability to respond to this unprecedented public health emergency. The
26 Governor's brief is attached as **Exhibit B**.

1 **IV. THE GOVERNOR'S EMERGENCY AUTHORITY**

2 **A. The California Emergency Services Act**

3 The California Emergency Services Act empowers state and local governments
4 to declare emergencies and coordinate efforts to provide services. Cal. Gov't Code
5 § 8550 *et seq.* Once an emergency is declared, state and local governments have broad
6 authority to protect citizens and property. *See Jacobson v. Massachusetts*, 197 U.S. 11,
7 27 (1905); *Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of*
8 *La.*, 186 U.S. 380 (1902); *Rasmussen v. Idaho*, 181 U.S. 198 (1901). As set forth
9 above, federal, state, and local emergencies have already been declared.

10 Several provisions of the California Emergency Services Act apply to the
11 Governor's authority to order, and the County's' authority to implement, Project
12 Roomkey:

- 13 • The Governor has "all police power vested in the state." Cal. Gov't Code
14 § 8627. This includes authority to "make, amend, and rescind orders and
15 regulations necessary" to respond to the emergency (*id.*, § 8567), as well as to
16 "suspend any statute prescribing the procedure for conduct of state business, or
17 the orders, rules, or regulations of any state agency . . . where the Governor
18 determines and declares that strict compliance with any statute, order, rule, or
19 regulation would in any way prevent, hinder, or delay the mitigation of the
20 effects of the emergency." (*Id.* § 8571.)
- 21 • The Governor has authority to "[u]se and employ any of the property, services,
22 and resources of the state as necessary to carry out the purposes of this chapter."
23 Cal. Gov't Code § 8570. He can also "[p]lan for the use of any private facilities,
24 services, and property[.]" *Id.*
- 25 • The Governor can commandeer or utilize any private property or personnel
26 deemed necessary in carrying out his responsibilities as Chief Executive of the
27 state. *Id.* § 8572.
- 28 • Under a Governor-declared state of emergency, a political subdivision, which
includes counties, "shall take such action as may be necessary to carry out the
provisions thereof." Cal. Gov't Code § 8568; *see also* Cal. Gov't Code § 8557
(b) (defining "political subdivision" to include any county).

- 1 • Local governing bodies can promulgate orders and regulations necessary for the
2 protection of life and property. Cal. Gov't Code § 8634.
- 3 • Every political subdivision is obligated to take all actions necessary to carry out
4 a statewide emergency plan. Cal. Gov't Code § 8568.
- 5 • The California Emergency Services Act designates the counties as operational
6 areas. Cal. Gov't Code § 8605. The County has the ultimate power to govern
7 the disaster area, which includes the cities. 62 Ops. Cal. Atty. Gen. 701 (1979)
8 (“Cities within a county are bound by county rules and regulations adopted by
9 the county pursuant to section 8634 of the Government Code during a county
10 proclaimed local emergency when the local emergency includes both
11 incorporated and unincorporated territory of the county.”).
- 12 • If there are conflicts between county and city emergency ordinances/orders, the
13 county’s emergency ordinances/orders control. *Id.* (stating “insofar as measures
14 taken by different levels of government with respect to the same emergency
15 conflict, the measures taken by the agency with the more inclusive territorial
16 jurisdiction (e.g., county versus a city) must govern”).

17 Given this broad authority, the State and the County have the authority, and the
18 public safety obligation, to implement Project Roomkey.

19 **B. Project Roomkey Is A Matter Of Statewide Concern**

20 Under Article 11, section 7 of the California Constitution, cities can only regulate
21 their local affairs to the extent there is no conflict with state or federal law. Local
22 legislation in conflict with general law is void. *California Fed. Savings & Loan Ass’n.*
23 *v. City of Los Angeles*, 54 Cal. 3d 1, 17 (1991); *Anderson v. City of San Jose*, 42 Cal.
24 App. 5th 683, 693 (2019). In *Anderson*, the Court of Appeal held that the City of San
25 Jose’s policy for the sale of surplus city-owned land was preempted by the State’s
26 affordable housing act. *Anderson*, 42 Cal. App. 5th at 693.

27 Here, the County’s emergency use of hotels/motels under Project Roomkey and
28 for the purposes of isolation and quarantine, as authorized by the California Emergency
Services Act and the Governor’s Executive Order, is a matter of statewide concern.
Housing individuals experiencing homelessness is necessary to protect public health

1 and save lives. Individuals experiencing homelessness, particularly the elderly and the
 2 medically compromised, are particularly vulnerable to COVID-19, whether they are on
 3 the streets or in crowded shelters where isolating is not feasible. Individuals
 4 experiencing homelessness are also more likely to use hospital emergency rooms when
 5 ill. Providing them with temporary housing will relieve the pressure on the already-
 6 strained hospital system.

7 The law is clear that cities cannot interfere with Project Roomkey or efforts to
 8 procure and operate rooms for the purpose of isolation and quarantine, whether by way
 9 of order, rule, regulation, or contract.

10 **V. CONCLUSION**

11 Project Roomkey and County efforts to procure and operate rooms for the
 12 purpose of isolation and quarantine are authorized by the California Emergency
 13 Services Act and Executive Order N-25-20. It is part of the County's ongoing
 14 efforts to meet the needs of its most vulnerable residents.

15
 16 DATED: April 21, 2020

MILLER BARONDESS, LLP

17
 18
 19 By: /s/ Louis R. Miller

LOUIS R. MILLER

Attorneys for Defendant

COUNTY OF LOS ANGELES

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 04/20/2020

TIME: 10:00:00 AM

DEPT: C25

JUDICIAL OFFICER PRESIDING: Thomas A. Delaney

CLERK: Alma Bovard

REPORTER/ERM: (ACRPT) Cheri Violette CSR# 3584

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2020-01139345-CU-MC-CJC** CASE INIT.DATE: 04/14/2020

CASE TITLE: **City of Laguna Hills vs. Elite Hospitality, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 73261226

EVENT TYPE: Ex Parte

MOVING PARTY: Sukin & Rosenfeld LLC, City of Laguna Hills, GJC Properties 8 LP, Erik M. Block, BFE Asset Partners, LLC

CAUSAL DOCUMENT/DATE FILED: Complaint, 04/14/2020

APPEARANCES

Daniel Heaton, Kelly Richardson, Daniel Nordberg, from Richardson Ober DeNichilo, present for Plaintiff(s) telephonically.

Donald Dunn, Laura Knapp, from County Counsel, present for Defendant(s) telephonically.

Interested Party: Jonathan Eisenberg appearing by CourtCall for Governor Gavin Newsom

Interested Party: Brooke Weitzman appearing by Courtcall for Orange County Catholic Work

Cheri Violette appeared telephonically.

The Court allows the following news media to appear telephonically for listening purposes only:

Corbin Carson, Reporter from KFI AM 640

Carla Hall, Editorial Writer from LA Times

Hannah Fry, Reporter from LA Times

Martin Macias, Reporter from Courthouse News

Jeong Park, Reporter from OC Register

Margaret Carrero from KNX News

Paul Anderson from City News Service

The Court's tentative ruling is provided to all Counsel and news media via e-mail.

Plaintiff made oral objections to Counsel Eisenberg and Brooke Weitzman speaking at this hearing. The Court overrules the objections as to appearing at the hearing and tables the issue of speaking.

The Court hears oral arguments.

The Court confirms the tentative ruling as follows:

On Thursday, April 16, 2020, the Court denied Plaintiffs' request for a temporary restraining order sought on the basis of first and fourth causes of action for abatement of public nuisance and abatement of nuisance, and ordered supplemental briefing from the parties on the issues related to the third cause of action for breach of CCRs. Specifically, the Court ordered the parties to brief whether Defendant County

has the authority, pursuant to Government Code section 8572 (or any other legal authorities), to utilize the Laguna Hills Inn ("LHI" or "the hotel") for the planned purpose in light of the existing Conditions, Covenants, Restrictions and Reservation of Easements on the property.

Having read and considered the supplemental briefing of Plaintiffs and Defendant County, the Court now rules that Plaintiffs' request for a temporary restraining order sought on the basis of the breach of CC&Rs is denied. The objections submitted by Plaintiffs to the supplemental declarations of Frank Kim and Kevin Akash are sustained. The remainder of Plaintiffs' objections are overruled.

Plaintiffs have the burden to show all elements necessary to support issuance of a temporary restraining order. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481). In ruling on an application for a TRO, the Court must weigh the likelihood that Plaintiffs will ultimately prevail on the merits and the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Id.* at 1463.)

The third cause of action for Breach of CC&Rs alleges that LHI is located within a commercial interest development known as Plaza Point, which is subject to certain CC&Rs. Plaintiffs argue that the contract between Defendant Elite Hospitality and the County to use LHI temporarily to shelter homeless individuals who are Covid-19 positive or symptomatic is a change in use of the hotel and, therefore, a breach of the CC&Rs.

Defendant County does not dispute that the CC&Rs apply to LHI. Instead, the County argues that the planned use of the hotel in this instance is not a change in use of the hotel, but even if it is, the County has the authority, as agent of the State under the Governor's declaration of emergency, to utilize the hotel in this manner to address this public health crisis.

While the Court remains unpersuaded by the County's argument that this is not a change in use of LHI, the Court finds that the County has the authority to enter into this contract with Defendant Elite Hospitality to utilize the hotel under these limited circumstances in the manner it has proposed, regardless of the CC&Rs.

Plaintiffs do not dispute that, when a state of emergency is declared, the Governor can commandeer or utilize any private property deemed necessary in carrying out his responsibilities. (Gov. Code § 8572.) Under a state of emergency, a political subdivision, which includes counties, "shall take such action as may be necessary to carry out the provisions thereof." (Gov. Code, § 8568; see also Gov. Code § 8557 (b) (defining "political subdivision" to include any county).)

Defendant County has produced sufficient evidence that it is acting as an agent for the State in contracting with Defendant Elite Hospitality to shelter homeless individuals who are Covid-19 positive or symptomatic. Pursuant to Resolution No. 2020-11, the County Board of Supervisors directed all County departments and agents to take "those actions, measures and steps deemed necessary to assure the health, safety and welfare of Orange County citizens and property, including requesting mutual aid to the extent such aid is necessary." (Simmering Dec., Exhibit 4.) The Governor then issued a series of Executive Orders ordering state agencies to identify and make available, including through commandeering property, hotels and other places of temporary residence, in part to provide shelter for homeless Californians and to remove restrictions on a local jurisdiction from spending funds to address the impacts of the Covid-19 pandemic on homeless individuals for their own sake, as well as for the purpose of protecting public health in general by flattening the curve and slowing the spread of COVID-19 in local communities and throughout the State. (Simmering Dec., ¶¶ 13-16, Exhibits 6, 7, 8, and 9.) Finally, the lease between the County and LHI provides that the Agreement is directly related to the Covid-19 emergency and that the County "enters into this Occupancy as the agent of the State of California." (Simmering Dec., Exhibit 14.)

The County is acting consistent with the Governor's orders in the context of this state of emergency. The

CC&Rs must temporarily yield to the government's limited use of its police powers during this state of emergency.

Accordingly, the request for a temporary restraining order on the claim for breach of CC&Rs is denied. Insofar as the second cause of action for declaratory relief is based on the same theory as the claim for breach of CC&Rs, the request for a temporary restraining order is denied for the same reasons.

The Court notes that, this morning, it received a brief from the Governor of California Gavin Newsom, which apparently was sent by electronic mail to the Court and counsel for the parties yesterday, Sunday, April 19, 2020 at approximately 9:24 p.m. The Court has not read or considered the Governor's brief given the time it was received because the Court sees no need for further briefing at this time. Also, allowing for further briefing from the Governor or any other interested party would necessitate allowing Plaintiffs the opportunity to respond to the further briefing, thereby requiring the Court to delay its ruling.

Plaintiffs are ordered to give notice.

The Order to Show Cause re: Preliminary Injunction is scheduled for hearing on 04/30/2020 at 10:00 AM in Department C25. All parties shall appear by telephone.

Pursuant to Mr. Richardson's request, the Ex Parte documents are deemed the moving papers. Defendants' response must be served by e-mail (CivilUrgent@occourts.org) by 5:00 pm on April 23, 2020 and e-filed on the same day. Plaintiff's reply must be served by e-mail (CivilUrgent@occourts.org) by April 27, 2020, 5:00 pm and e-filed on the same day.

Plaintiffs are ordered to give notice.

EXHIBIT B

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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

04/20/2020

Clerk of the Superior Court
By Imelda Yu, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

CITY OF LAGUNA HILLS, ET AL.,

Plaintiffs,

v.

ELITE HOSPITALITY, INC., ET AL.,

Defendants.

Case No. 30-2020-01139345-CU-MC-CJC

**BRIEF OF GOVERNOR GAVIN
NEWSOM, BY SPECIAL APPEARANCE,
IN SUPPORT OF ORANGE COUNTY'S
OPPOSITION TO PLAINTIFFS' *EX
PARTE* APPLICATION FOR ORDER TO
SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER**

Date: April 20, 2020
Time: 10:00 a.m.
Dept: C-25
Judge: Thomas A. Delaney
Trial Date: None Set
Action Filed: April 14, 2020

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1 Governor Gavin Newsom files this brief in support of Orange County's opposition to
2 Plaintiffs' *ex parte* application for an order to show cause and temporary restraining order, and
3 requests to specially appear at the hearing scheduled for April 20, 2020. Due to the urgency and
4 importance of public health measures implemented during the coronavirus emergency, the
5 Governor respectfully requests that the Court accept and consider this brief and allow attorneys
6 for the Governor to appear at the hearing on this matter. As discussed below, consistent with the
7 broad emergency authority granted to the Governor and the County, the Court should deny
8 Plaintiffs' application and permit County officials to implement vital public safety measures, such
9 as Project Roomkey, that are designed to curb the spread of the deadly COVID-19 virus.

10 INTRODUCTION

11 The State of California, like the rest of the world, is combatting a public health emergency
12 of a magnitude unseen for at least a century. COVID-19 is an infectious and frequently deadly
13 disease that already has killed over 39,000 Americans. This extraordinary pandemic calls for
14 swift and decisive action using the limited tools available to curb the disease's spread. In
15 particular, the pandemic will be halted only if transmission is curbed, and if individuals who have
16 been diagnosed with or exposed to the disease are isolated from others (and given proper medical
17 treatment).

18 California faces a particularly difficult challenge in fighting the pandemic, because of the
19 State's large homeless population, present in every one of the State's 58 counties. For various
20 reasons, homeless individuals often have particularly great risk of being exposed to and
21 contracting COVID-19, yet they do not have homes in which to self-isolate, increasing the risk of
22 the disease spreading. That is why addressing the homelessness crisis is a critical element of
23 California's strategy to stop the spread of COVID-19.

24 In response to the COVID-19 pandemic, the Governor has proclaimed a state of emergency
25 and initiated Project Roomkey. Project Roomkey's purpose is to utilize, throughout the State,
26 hotel and motel rooms that are currently sitting empty, to temporarily house, isolate, and treat
27 homeless individuals who have been diagnosed with or are at high risk of contracting COVID-19.
28 Local authorities are authorized to coordinate with the State to identify and convert appropriate

1 facilities and enter into contracts with owners for these purposes, in accordance with a strict set of
2 guidelines.

3 As part of Project Roomkey, the County, in coordination with the State, contracted with
4 Co-Defendant Elite Hospitality, Inc., to use its hotel, the Laguna Hills Inn, to isolate and, where
5 necessary, to provide appropriate treatment for homeless individuals in Orange County.
6 However, Plaintiffs are trying to block this crucial emergency public-health initiative, on the
7 meritless claim that the Covenants, Conditions, Restrictions, and Reservations of Easements
8 (CCR&Rs) that apply to Laguna Hills Inn prevent it from being used as temporary housing for
9 sick or vulnerable people, in the midst of a harrowing pandemic. But the steps that the Governor
10 and the County have taken fall squarely within the emergency authority of the Governor and
11 County to take decisive action to address the crisis. This authority encompasses the ability to
12 temporarily suspend *localized, non-emergency, contractual* CCR&Rs. A patchwork of localized
13 and private contracts, which were entered into during ordinary circumstances, do not supersede
14 emergency powers exercised by the Governor in cooperation with the counties to address the
15 unprecedented pandemic at hand.

16 In seeking emergency equitable relief to obstruct state and local emergency actions to
17 respond to a public health emergency, plaintiffs bear a particularly heavy burden. But rather than
18 begin to satisfy this burden Plaintiffs all but ignore the extraordinary state of emergency, as well
19 as the imminent threat that the COVID-19 pandemic poses to the health and safety of all
20 Californians absent measures like those provided for in Project Roomkey. Nor have Plaintiffs
21 shown that they will suffer more harm in the absence of injunctive relief than the general public
22 will suffer if a temporary restraining order is granted. The harms Plaintiffs point to are
23 speculative and ignore the reality on the ground. Without Project Roomkey, state and local
24 officials will lose an important tool to combat the virus, and more Californians will suffer and die.

25 **BACKGROUND: EXECUTIVE ORDERS AND PROJECT ROOMKEY**

26 To prepare for and respond to suspected or confirmed cases of COVID-19 in California and
27 to implement measures to mitigate the spread of COVID-19, the Governor proclaimed a State of
28 Emergency in California on March 4, 2020. (Defs.' Opp. to Plfs.' Ex Parte Applic. for OSC/TRO

1 (“Def. TRO Opp.”), Ex. 5 [State of California Proclamation of State of Emergency by Governor
2 Gavin Newsom].)

3 COVID-19 presents a particular threat to the state’s homeless population. Recognizing this
4 risk, the State acted quickly to address the particular risks of transmission to the homeless
5 population, implementing a series of measures that together are called Project Roomkey. On
6 March 10, 2020, noting the increased risks of COVID-19 infection of the homeless population
7 and, therefore, the greater potential of that population to transmit the virus, the California
8 Business, Consumer Services and Housing Agency directed homeless assistance providers
9 throughout California to identify spaces that can be used to accommodate sick and vulnerable
10 homeless individuals who have no option to self-quarantine outdoors. (Def. TRO Opp., Ex. 10
11 [Guidance for Homeless Assistance Providers on Novel Coronavirus (COVID-19)], pp. 1, 3.)

12 On March 12, 2020, Governor Newsom signed Executive Order N-25-20, which cited to
13 the immediate need to secure numerous facilities in order to isolate and treat individuals exposed
14 to COVID-19, and which also cited to the increased demands and strain on existing homeless
15 shelters and resources. (Def. TRO Opp., Ex. 6 [Executive Order N-25-20], p. 1.) Accordingly,
16 the Governor ordered the California Health and Human Services Agency and Office of
17 Emergency Services to identify and make available hotels and other similar facilities to be used as
18 temporary residences for quarantining and treating individuals who have tested positive for or
19 have a high-risk exposure to COVID-19. (*Id.*, p. 3, ¶ 8.) Executive Order N-25-20 specifically
20 provides that such property be made available “*through the use of any contracts or other*
21 *necessary agreements*, and, if necessary, through the State’s power to commandeer property.”
22 (*Id.*, italics added.)

23 On March 18, 2020, the State issued additional guidance to homeless assistance providers
24 statewide, updating them on the State’s efforts to secure hotel/motel rooms to temporarily house
25 homeless individuals that are diagnosed or exposed to COVID-19. (Def. TRO Opp., Ex. 11
26 [Interim Guidance for Homeless Assistance Providers on Novel Coronavirus (COVID-19)], p. 3.)
27 Homeless assistance providers were directed to coordinate with their local County Office of
28 Emergency Management to determine the need for such spaces and to also coordinate with the

1 State. (*Id.*, p. 4.) The next day, March 19, 2020, the Governor signed Executive Order N-33-20,
 2 well-known as the stay-at-home order. (Def. TRO Opp., Exh. 9 [Executive Order N-33-20].)

3 On March 27, 2020, following the State’s pledge of funds in furtherance of Project
 4 Roomkey, the State secured federal funds from the Federal Emergency Management Agency
 5 (FEMA). (Def. TRO Opp., Exh. 12 [Letter, FEMA to OES].)

6 Project Roomkey is a program of statewide importance, as explained in the detailed
 7 guidelines issued as part of the program’s implementation. (See Def. TRO Opp., Ex. 2 [Project
 8 Roomkey: Emergency Housing for Immediate Protection Factsheet].) It necessarily requires the
 9 suspension of certain restrictions on the use of funds and property. (See, e.g., Def. TRO Opp.,
 10 Ex. 8 [Executive Order N-32-20], pp.1-2 [suspending portions of Health and Safety Code].)
 11 Hotel rooms that would ordinarily not be eligible for certain funds to be converted to isolation
 12 shelters are no longer restricted, and certain regulations governing those funds are suspended, on
 13 a temporary basis, under Project Roomkey. (*Id.*, ¶¶ 1-3.) Given the unique circumstances that
 14 each county faces regarding homelessness and Project Roomkey’s stringent requirements, the
 15 State works with local authorities as well as private entities to identify appropriate hotel/motel
 16 rooms, which allows each county “to focus its resources on the provision of site supervision,
 17 security, laundry, sanitation, and other services.” (Project Roomkey: Emergency Housing for
 18 Immediate Protection Fact Sheet, available at [https://www.cdss.ca.gov/Portals/9/FEMA/Project-](https://www.cdss.ca.gov/Portals/9/FEMA/Project-Roomkey-Fact-Sheet.pdf)
 19 [Roomkey-Fact-Sheet.pdf](https://www.cdss.ca.gov/Portals/9/FEMA/Project-Roomkey-Fact-Sheet.pdf) (last accessed April 19, 2020.)

20 ARGUMENT

21 I. THE GOVERNOR HAS BROAD AUTHORITY TO ISSUE EXECUTIVE ORDERS DURING A 22 STATE OF EMERGENCY, AND THE COUNTY MAY IMPLEMENT THOSE ORDERS DURING AN EMERGENCY

23 The U.S. Supreme Court has long recognized that “a community has the right to protect
 24 itself against an epidemic of disease which threatens the safety of its members.” (*Jacobson v.*
 25 *Massachusetts* (1905) 197 U.S. 11, 27, internal quotation marks omitted.) In that regard, the
 26 Supreme Court has permitted states to enact “quarantine laws and health laws of every
 27 description.” (*Id.* at p. 25). Courts have universally upheld actions similar to the Executive
 28 Order’s measures to combat the COVID-19 pandemic. (See, e.g., *Compagnie Francaise de*

1 *Navigation a Vapeur v. Bd. of Health of State of La.* (1902) 186 U.S. 380 [upholding quarantine
 2 law against constitutional challenges]; *Rasmussen v. Idaho* (1901) 181 U.S. 198 [permitting a ban
 3 on certain animal imports if evidence of disease was found]; see also *Benson v. Walker* (4th Cir.
 4 1921) 274 F. 622 [board of health resolution preventing circuses from entering a county because
 5 of 1918-1919 influenza epidemic found lawful]; *Hickox v. Christie* (D.N.J. 2016) 205 F. Supp.
 6 3d 579 [quarantine of nurse who had treated Ebola patients in Sierra Leone found lawful].)

7 Through the California Emergency Services Act, the Legislature has centralized authority
 8 to respond to state emergencies within the Governor. In emergencies like the present one, the
 9 Governor has “all police power vested in the state.” (Gov. Code, § 8627.) This includes
 10 authority to “make, amend, and rescind orders and regulations necessary” to respond to the
 11 emergency (*id.*, § 8567), as well as to “suspend any statute prescribing the procedure for conduct
 12 of state business, or the orders, rules, or regulations of any state agency . . . where the Governor
 13 determines and declares that strict compliance with any statute, order, rule, or regulation would in
 14 any way prevent, hinder, or delay the mitigation of the effects of the emergency.” (*Id.*, § 8571).

15 The State’s proclamation of a state of emergency and invocation of emergency powers
 16 “necessarily restrict[] activities that would normally be constitutionally protected,” and “[a]ctions
 17 which citizens are normally free to engage in [have] become subject to criminal penalty.”
 18 (*United States v. Chalk* (4th Cir. 1971) 441 F.2d 1277, 1281.)¹ Given this broad authority, the
 19 Governor has the authority to implement Project Roomkey, and to authorize local authorities to
 20 carry out its provisions, even if doing so temporarily overrides contracts or agreements currently
 21 in place.² Indeed:

22 [i]n the exercise of the emergency powers . . . vested in him during a state of war
 23 emergency or state of emergency, the Governor is authorized to commandeer or
 24 utilize any private property or personnel deemed by him necessary in carrying out the
 responsibilities hereby vested in him as Chief Executive of the states and the state
 shall pay the reasonable value thereof.

25 _____
 26 ¹ Indeed, states are permitted to curtail constitutional rights during an emergency. (See,
 27 e.g., *Jacobson v. Massachusetts*, *supra*, 197 U.S. at p. 29 [recognizing that “under the pressure of
 great dangers,” constitutional rights may be reasonably restricted “as the safety of the general
 public may demand”].)

28 ² County Defendants address this issue at length in their briefing to the court. (Def. Supp.
 Opp. at pp. 2-8.)

(Gov. Code, § 8572.) Plaintiffs’ request here threatens to undermine the unique design of California’s system of government in responding to public health emergencies at a moment of extreme peril. Under the Emergency Services Act, the Governor has the power to approve a local emergency response plan. (Gov. Code, § 8570, subd. (d).) The Governor has exercised that power in the above-noted Executive Orders, and specifically approves the County’s execution of contracts to procure privately-owned quarantine and isolation spaces for temporary use during this moment of crisis. Also under the Emergency Services Act, each political subdivision, including Orange County and the City of Laguna Hills, is obligated to take all actions necessary to carry out a statewide emergency plan. (Gov. Code, § 8568.) The County is taking appropriate actions to implement Project Roomkey, and the City of Laguna Hills does not have authority to attempt to curb those actions. (Cf. *Interstate Marina Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435 (holding that county rent-control ordinance did not unconstitutionally impair pre-existing real-estate development contracts); Jared Igerman, *California Counties: Second-Rate Localities or Ready-Made Regional Governments?*, 26 Hastings Const. L.Q. 621, 670 (Spring 1999) (“In principle, there is nothing to prevent the State from delegating to the counties any or all of its land use regulation powers that preempt conflicting municipal laws”).)

In addition, the County itself has the authority to temporarily override the CCR&Rs as needed to combat an emergency health crisis.³ The Emergency Services Act expressly provides that counties may take actions precisely like the ones at issue here. (Gov. Code § 8634 [cities and counties “may promulgate orders and regulations necessary to provide for the protection of life and property”].) Cities, including Laguna Hills, must abide by county emergency rules and regulations. (See 62 Ops.Cal.Atty.Gen. 701 (1979) [“Cities within a county are bound by county rules and regulations adopted by the county pursuant to section 8634 of the Government Code during a county proclaimed local emergency when the local emergency includes both incorporated and unincorporated territory of the county”].) On February 26, 2020, the County declared a local emergency and local health emergency in response to COVID-19. (See County

³ This is the case even assuming the CC&Rs would actually apply to the contract between the County and the hotel owner. As the County has forcefully argued, there is serious doubt that the CC&Rs are in any way violated by the agreement to address an immediate health crisis.

1 of Orange, Proclamation of a Local Emergency, available at
 2 <https://www.ocgov.com/civicax/inc/blobfetch.aspx?BlobID=112436>, pp. 4-6 (last accessed April
 3 19, 2020).) In that proclamation, the County explicitly ordered that “all County departments and
 4 agencies take those actions, measures and steps deemed necessary to assure the safety and welfare
 5 of Orange County residents and property.” (County of Orange, Proclamation of a Local
 6 Emergency, p. 5.) Neither the city nor private parties have authority to interfere with these life-
 7 saving measures.

8 Finally, contrary to Plaintiffs’ argument (Plaintiffs’ Supp. TRO, at pp. 2-4.), nothing
 9 requires the Governor to fully “commandeer” private property in all circumstances. The flexible
 10 authority granted to the Governor allows him to “utilize” property, including through contracts
 11 and voluntarily arrangements, as Executive Order N-25-20 specifically provides for. (Gov. Code,
 12 § 8572; Def. TRO Opp., Ex. 6, ¶ 8.) The use of one option versus another would not make any
 13 difference to the rights of third parties or the general public.

14 There is no merit to Plaintiffs’ assertion that what the Governor may do through
 15 commandeering property he may not do through much less drastic measures: the voluntary
 16 cooperation of the County and private property owners in accordance with existing executive
 17 orders and the County’s own emergency declaration.⁴ Project Roomkey provides for homeless
 18 housing, on a temporary basis, with the agreement and participation of counties and hotel/motel
 19 owners, in order to stop the spread of the virus. In an emergency, there is no prohibition on the
 20 Governor or local officials to take these steps and allow the State to arrange with counties and
 21 private parties, in a cooperative fashion, to temporarily utilize property to address a public
 22 emergency, as has been done here.⁵ The CCR&Rs—which are private, localized, non-

23 ⁴ Plaintiffs’ argument also undercuts their claim of irreparable harm absent an injunction,
 24 because, they tacitly admit, the Governor could lawfully commandeer the Laguna Hills Inn for
 Project Roomkey.

25 ⁵ Moreover, Plaintiffs appear to be using the CCR&Rs as a stand-in for their objections to
 26 Project Roomkey, for they contend that “no amount of security or other precautions can make
 [Laguna Hills Inn] safe.” (Plaintiffs’ TRO, at p. 7.) It is disingenuous to urge this Court, as
 27 Plaintiffs do, to require the County and the State to seek approval from the Development
 28 Committee, which would have denied approval as a foregone conclusion, even assuming that a
 functioning Development Committee exists, something that has been called into question. (See
 Akash Decl., § 14 [“In the 22 years that Elite has owned the LHI, I have never heard of a

1 emergency, contract-based regulations—must yield, for now, to the overarching emergency
 2 authorities of the Governor and the County when they are addressing an unprecedented global
 3 pandemic.⁶

4 Moreover, as the County points out, CCR&Rs are generally void if contrary to public
 5 policy. (See, e.g., *Hall v. Butte Home Health, Inc.* (1997) 60 Cal.App.4th 308 [restrictive
 6 covenant preventing group home for the disabled violated state law prohibiting discrimination
 7 against the disabled]; *Barrett v. Dawson* (1998) 61 Cal.App.4th 1048 [upholding state law
 8 declaring restrictive covenants against day care homes in residential neighborhoods were void;
 9 recognizing significant and legitimate public purpose].) Here, the CCR&Rs are not generally
 10 void; however, during the pandemic and the ongoing state of emergency, there is a clear statutory
 11 power to override them temporarily to the extent that they conflict with the Governor’s and
 12 County’s orders.

13 **II. THE STATE AND THE PUBLIC WILL BE HARMED IF INJUNCTIVE RELIEF IS GRANTED**

14 **A. Plaintiffs Have Failed to Assert Harms That Outweigh Using the Laguna 15 Hills Hotel for Project Roomkey**

16 The issuance of an injunction here would lead to far greater harm to the Defendants—and
 17 to the general public—as compared to the harm Plaintiffs would suffer if the injunction were
 18 denied; therefore, Plaintiffs’ application for a TRO should be denied. (*People ex rel. Gallo v.*
 19 *Acuna* (1997) 14 Cal.4th 1090, 1109.)

20 Plaintiffs contend that the individuals to be housed within the City pose a risk to Laguna
 21 Hills residents because they may violate the requirements of the Stay-At-Home order, quarantine
 22 orders, and the requirements of accommodation and treatment set forth by Project Roomkey, and
 23 enter the community at large. (Plfs.’ TRO App. at pp. 4-5, 7, 15.) Other than speculation,
 24 Plaintiffs have no basis to make such assertions. As County Defendants note, there is now a
 25 fence entirely around the Laguna Hills Inn (Decl. of David H. Solo, ¶ 7 and Exh. A) and there

26 _____
 26 Development Committee for Plaza Pointe . . . nor have I received any communications from such a
 27 committee”].)

27 ⁶ Moreover, many businesses in Plaza Pointe are now effectively prohibited from
 28 complying with CCR&Rs, because the State has ordered those businesses closed.

1 will be a full-time security detail at the site (Decl. of Ahmad Hamini, ¶ 3.) Further, Plaintiffs
 2 discount the minimal risk to permanent residents who are in compliance with the Stay-At-Home
 3 Order.⁷ Plaintiffs' contention that the use of the Laguna Hills Inn for Project Roomkey would
 4 expose the City's population to potentially infected healthcare workers and other staff is similarly
 5 based on pure speculation. (Plaintiffs' TRO at p. 7, 15.) The risk is no greater than that posed by
 6 the healthcare workers who work in medical facilities within the City limits or who live within
 7 the City but commute to healthcare facilities outside the City, or by all other essential employees
 8 who commute to or from Laguna Hills. The harms to Plaintiffs stem from the ongoing crisis, not
 9 the efforts to prevent the spread of the disease.

10 **B. Issuance of a TRO Would Immediately and Irreparably Harm the Public**
 11 **Interest**

12 On the other hand, an injunction would cause immediate harm to the general public. As
 13 Plaintiffs correctly note, the most effective measures to stopping the spread of COVID-19 is to
 14 remain "physically separated from known or potentially infected individuals." (Plfs.' TRO App.,
 15 at p. 2.) To that end, the Governor has issued multiple orders and taken other actions. And
 16 because of the significant threat to the homeless population posed by the virus, and the threat of
 17 continued transmission by the homeless population, the State has launched Project Roomkey.
 18 Counties are directed to implement Project Roomkey across the state in order for the program to
 19 be effective, including making use of hotels and motels—wherever they may be—that are well-
 20 suited to provide accommodations for the purposes of isolation and treatment.

21 Swift implementation of Project Roomkey is of vital statewide importance. If homeless
 22 individuals who have been diagnosed with or are exhibiting signs of COVID-19 are left unhoused
 23 and without treatment, the virus will continue to spread, and not just within the homeless
 24 population, but to the wider population, in Laguna Hills and elsewhere.⁸

25 ⁷ Plaintiffs assert that the Laguna Hills Inn is next to a "bustling" commercial area.
 26 (Plaintiffs' TRO, at p. 3.) Although that may be the case for the period before and after the
 present emergency, Plaintiffs' assertion ignores the fact that the Stay-At-Home Order allows only
 emergency services and essential businesses to operate.

27 ⁸ Plaintiffs point to the low numbers of confirmed Covid-19 cases in the City thus far.
 28 (Plaintiffs' TRO at p. 3.) But these numbers are likely a mere fraction of the true rate of
 infections. (See Mason, Netburn, "Coronavirus Infections Could Be Much More Widespread

Granting a TRO here would significantly damage Project Roomkey's success, at a crucial time where the Governor is urging cities to overcome their hesitancy and implement its provisions. (See McGreevy, "Some Cities Are Blocking California Efforts to Protect Homeless People From Coronavirus, Newsom Says" (Los Angeles Times, April 18, 2020), available at <https://www.latimes.com/california/story/2020-04-18/gavin-newsom-project-roomkey-homeless-people-housing-california-hotels> (last accessed April 18, 2020).) The County would have to start from scratch to locate new temporary housing for homeless coronavirus victims in South Orange County, causing delays that could be deadly. The risk of infection to asymptomatic homeless persons would increase. And infections in the homeless population could easily spread to the wider population. Finally, an injunction would send the wrong signal to cities who are similarly resisting implementing Project Roomkey.

CONCLUSION

For the foregoing reasons, the Governor respectfully requests that the Court deny Plaintiffs' application for a temporary restraining order.

Dated: April 19, 2020

Respectfully Submitted,

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Than Believed, California Study Suggests," (Los Angeles Times, April 17, 2020), available at <https://www.latimes.com/california/story/2020-04-17/coronavirus-antibodies-study-santa-clara-county> (last accessed April 18, 2020).)

DECLARATION OF SERVICE BY E-MAIL

Case Name: **City of Laguna Hills vs. Elite Hospitality, Inc.**

No.: **30-2020-01139345-CU-MC-CJC**

I declare:

On April 19, 2020, I served the attached **BRIEF OF GOVERNOR GAVIN NEWSOM, BY SPECIAL APPEARANCE, IN SUPPORT OF ORANGE COUNTY'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER** by transmitting a true copy via electronic mail to the following recipients:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 19, 2020, at Los Angeles, California.

Lara Haddad
Declarant

s/ Lara Haddad

Signature